UNITED STATES TAKES WYNNE

(From Sunday's Advertiser.)

A verdict implying that A. F. McKinnon, the third assistant engineer of the Rosecrans, had been wilfully murdered by Oiler John Wynne, of the same vessel, was returned last night by the coroner's jury, and immediately afterward the case was taken out of the hands of the local authorities and the accused man arrested on a Federal warrant charging murder under Section 5339 of the Federal statutes. This section provides for the punishment of murder committed on the high sea or on any body or arm of water outside the jurisdiction of a state or territory. As the killing was committed on board a vessel flying the American flag the crime will come under this section of the statutes and Wynne will be tried before the Federal court.

Immediately after the inquest Wynne was taken to the Judiciary building, where he was examined before United States Commissioner Hatch. From his own statement he was guilty of causing the death of McKinnon and he was bound over without bail for the Federal grand jury, which will meet on October 14. Immediately after the committal Commissioner Hatch and United States District Attorney Breckons went down to the Rosecrans, where they served subpoenas on the captain and other officers who will be required as witnesses in the case when it comes up before the grand jury.

The story in the afternoon papers to the effect that Wynne intended to kill the first assistant engineer and not McKinnon, was evidently the creation of an underworked brain, as the testimony of the officers of the Rosecrans at the inquest shows. Wynne stated in plain words after the deed, that he had meant to kill McKinnon and no idea has ever entered the head of any of those on board the Rosecrans that the first assistant engineer was the man whom he was after.

The decision to take the matter into the Federal court was reached yesterday, after a conference between the Attorney General and the United States District Attorney, and as a result the arrest was made as soon as the verdict was returned. The coroner's jury brought in their findings in the following form:

"We, the coroner's jury, decree that A. F. McKinnon, third assistant engineer on the S. S. Rosecrans, came to his death by being struck on the right side of the head with a blunt instrument supposed to be a machinist's hammer, in the hands of one John Wynne, an employe on the S. S. Rosecrans.

(Sgd.) "WM. JARRETT, Coroner;
"J. J. MACDONALD,
"L. AYLETT,
"DAN VIDA,
"DAVID KAAHANUI,
"E. B. FREIL,
"OTTO SCHILLING."

THE EVIDENCE.

"I was under the influence of liquor, I was crazy; I probably did not realize what I had done."

Such were the words which John Wynne, accused of having murdered A. F. McKinnon, the third assistant engineer of the S. S. Rosecrans, uttered when asked by Deputy Attorney General Whitney, if he had anything to say.

Wynne was a bit reticent at first and in response to Mr. Whitney's, "Do you wish to be examined?" he replied, "I do not know whether it would be advisable for me to speak or not."

He was the last witness called, and before his testimony that of the captain, the mate, the chief engineer, and Dr. J. T. MacDonald had been heard.

Captain Holmes was the first witness called. He testified that to the best of his knowledge he knew of no hard feeling existing between any of the men on his ship. Of McKinnon's character, he said that it was A1, and of Wynne's, that it was "very good."

After testifying that he had been awakened, Holmes was asked if Wynne "appeared to be under the influence of liquor?" "To a certain extent," was the reply, "but he appeared to be able to know what he was doing. If the fact that he had done this sobered him or not I cannot say."

"Did he appear calm or nervous?"

"Calm at times, but excited at others."

Edward Wirchulist, mate of the Rosecrans, was the second witness called. His testimony was practically the same as that of Captain Holmes. Wirchulist was awakened by loud talking and stepping to the companion way he heard Wynne say, "I killed him, I done it."

"I walked toward him," Wirchulist continued, "and said, 'what did you do?' 'I finished him, I killed him,' he said. 'Who did you kill?' 'The third assistant engineer.' I looked in his room and saw the third assistant lying on the couch towards the door."

"Did you notice which side he was lying on?"

"The left side."

"What was Wynne's condition? Was he under the influence of liquor or not?"

"I don't know. He appeared quite cool. I got a pair of nippers from my room and he said, 'What are you going to do, Mr. Mate? I ain't going to run away. I done it, I killed him and I am glad of it.'"

When asked as to the condition of the dead man's room, the mate said that there appeared to have been no scuffle, though marks of blood were on the ceiling and wall of the room. The marks had been removed by washing.

The chief engineer was then called. He testified to having come aboard ship with his captain. Everything was quiet when he came aboard. He went to sleep early. How he was awakened he could not say, but the first words he heard were, "I done it." He got up, put on his shoes and went out of his room. He saw the oiler coming out of McKinnon's room and thinking that "he might do me bodily injury I held his wrist. 'I ain't going to hurt you,' he said. I retained hold of him until the first officer came up, and I told him to hold him while I went for a doctor.

Doctor MacDonald was the next examined. His testimony was that while the wounds on the head of the body which he had examined might have been caused by a fall from quite a height, he was of the opinion that the wounds had been occasioned by some blunt instrument. When asked if he thought that one blow would be sufficient to kill a man he replied that he hardly thought it would.

"You say that a fall might occasion the death, would it be possible for the wound to be occasioned by a fall to the floor?"

"No, that is absurd."

The hammer was produced. It was an ordinary machinist hammer and was covered with a red substance which the doctor pronounced to be blood.

The doctor was dismissed and Wynne was brought into the room. He was pale and his answers at first were unintelligible. In the midst of a deathlike silence, in which every juror and witness strained his ears to catch every word, Wynne answered the questions which were put to him.

The testimony of his comrades on board ship was that he was not drunk yet Wynne was emphatic in saying that he was drunk and had had so many beers that he could not count them.

Wynne, who thought his watch ended at four o'clock in the morning, came ashore about half past nine, thinking that he would have no more work to do. He had four or five beers, and purchasing some underclothing he went back to the ship, where the first assistant engineer met him and asked him where he had been. "Ashore," was the reply. He was told that he would have to work until twelve, which he did. He claims to have came back drunk and while sitting at a table on the ship to have been insulted by the third assistant engineer.

"Where did you get the hammer."

"I don't know, sir; I've been trying to make out, sir, all this morning."

And "I dont know, sir," was the best that could be got out of the man for the rest of the questions.

"How is the man making out, sir," he asked, turning to Mr. Whitney.

"I can't tell you now," said the Deputy Attorney General, "you'll have to ask——" but the police came up just then and removed Wynne to his cell.

WILL RAISE POULTRY FOR HONOLULU MARKET

A new industry which has just been started in this city promises to reach to large proportions. This is the business started at the grounds of the Kaimuki Zoo, by the Hawaiian Poultry Farm, of which F. J. Grunenthal is manager. They propose to raise all kind of poultry and to supply the family trade of the city with geese, ducks, chickens, turkeys and eggs. They will also have many thousand pigeons on hand, with which to supply all demands for squabs.

The Hawaiian Poultry Farm has leased the Zoo buildings and the land surrounding them and will breed poultry for the home market at this location. The big building will be used for the brooders, in which the young chickens and turkeys will be kept, while the smaller building will be used for incubators. The farm will be stocked with the finest poultry which can be obtained from the mainland, one shipment of Vermont turkeys, 500 in number, showing the scale on which the business will be conducted.

Finely bred chickens, for the stocking of private farms will be one of the branches into which the Poultry Farm will go and the many interests which are allied to the general business will be carefully followed out. In this way it is expected that a large part of the chickens which have formerly been brought down here from the Coast in cold storage will be raised on this island. The land which is in use at present consists of three acres, but Mr. Grunenthal expects to obtain six acres more in the near future, which will also be used in the same work. Visitors to the new poultry farm will be welcome at all times.

HOMICIDE ON REEF.

John Wynne, who killed Third Assistant Engineer McKinnon of the S. S. Rosecrans Friday night, is now in Oahu Prison, having been taken there immediately after being charged under Federal jurisdiction Saturday night. Nobody is allowed to see him except on permission of U. S. District Attorney Breckons and a pass by Marshal Hendry.

He (sententiously)—I always speak my mind. She (tartly)—I suppose that is why you have the reputation of being a man of so few words.—Baltimore American.

SUPREME COURT UPHOLDS THE LIQUOR LICENSE LAW

(From Saturday's Advertiser.

The Supreme Court yesterday in a closely reasoned decision by Chief Justice Hartwell, sustained the validity of the liquor license law against all the objections made to it and attacks made on it on behalf of the defendant in the case of the Territory of Hawaii vs. Jacintho Miguel. This was the first case brought to test the law, and the points made were very forcibly presented by T. M. Harrison for the defendant. The Territory was represented in the argument by E. C. Peters with Attorney General Hemenway on the brief. The facts of the case are stated concisely in the opinion by Chief Justice Hartwell, which is given herewith in full:

OPINION OF THE COURT BY HARTWELL, C. J.

The defendant was charged July 8, 1907, before the district magistrate of Honolulu with selling in Honolulu July 6, 1907, certain intoxicating liquor, known as beer, contrary to the provisions of Act 119, Laws of 1907. He admitted the selling without a license. The prosecution admitted that he held a license under Act 67, Laws of 1905, which expired June 30, 1907, and that the beer was part of the stock held by him while holding the license; that he applied for a license under Act 119 and was refused by the Board of License Commissioners; also that before June 30, 1907, he applied to the board to exchange his license for a license under Act 119 and was refused, each application being in the form required by Act 119. The defendant was found quilty and sentenced to a fine of $100 and costs $1, from which judgment he appealed to this court on points of law, in substance, as follows: (1) In providing for appointment of a Board of License Commissioners with authority, in their discretion, to refuse or grant applications for licenses and to take evidence upon the applications with no appeal from their decisions, the act makes the board a court with judicial powers and functions whose acts are not subject to review or control by any other court; as the Legislature has no authority to create any but inferior courts (Sec. 81, Org. Act) the board is unauthorized by law; (2) the act deprives the defendant of his property without due process of law, contrary to the 14th amendment, he being prevented by its operation from disposing, after the expiration of his license, of the stock of liquors acquired by him while holding a license under the Act of 1905; (3) the act authorizes the Board of License Commissioners to refuse to grant any license and therefore is a prohibitory law, and yet its title, "An Act to Regulate the Sale of Spirituous Liquors, Repealing Act 67 of the Session Laws of 1905," does not suggest the subject and therefore the law is invalid by Sec. 45 of the Organic Act requiring that "each law shall embrace but one subject which shall be expressed in its title;" (4) the act, in requiring higher license fees for the sale of liquors manufactured out of the Territory than for those manufactured in the Territory by the licensee, violates Sec. 2 of Act 4 of the Constitution giving to citizens of each state "all privileges and immunities of citizens in the several states," and encroaches upon the exclusive power of Congress to regulate commerce.

As the defendant, not being a foreign manufacturer, has not brought himself within the class who would be affected by the alleged unconstitutional discriminations, the fourth ground of appeal will not be considered.

"There is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a State on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all." Hatch v. Reardon, 204 U. S. 460.

There is no obvious reason—no distinction based upon legislative objects which requires that a law to regulate sales of intoxicating liquors should be held to be less immune than a tax law from attack upon its constitutionality by persons not directly injured by the portions of the law alleged by them to be unconstitutional.

(1) Upon the defendant's contention that the Board of License Commissioners is an unauthorized body being a court and under the supervision of no other tribunal, it is to be observed that courts established for administration of public justice may have statutory jurisdiction over the subject of granting or refusing licenses for the sale of intoxicating liquors or the jurisdiction may be given to a designated official or board which does not thereby become a court. "The judicial power of the Territory," intended by the Organic Act, can be vested only "in one supreme court, circuit courts, and in such inferior courts as the Legislature may from time to time establish." The inferior courts with which judicial power of the Territory may be vested do not, in the sense in which the term is used in the Organic Act, include boards or commissioners or supervisors who perform certain functions of a judicial nature, it is true, but are not courts either in the popular or technical sense of the term.

In determining whether to "grant, refuse, suspend, revoke, regulate and control licenses," the board may subpoena witnesses, administer oaths to them and take their testimony, and although this is a judicial function the right to exercise it is not of itself sufficient to constitute the board a court. Such bodies as boards of county supervisors, the board of health, boards of registration of voters, boards of inspectors of elections, or agriculture and forestry, animal inspectors, dental examiners, equalization of taxes, medical examiners, prison inspectors and of education may be authorized by statute to administer oaths touching any matter or thing whereof they have jurisdiction or cognizance by law and to decide finally and without appeal such matters as properly come within their jurisdiction, and yet it would be a misnomer to classify such boards as courts of justice. They would be lawful bodies even if Congress had enacted that no court could be established by the Territorial Legislature and that the judicial power of the Territory should be vested solely in the supreme, circuit and district courts. See Ins. & Lumber Co. v. Macfarlane, 14 Haw. 489. Furthermore, the act (Sec. 4), in declaring that "the exercise of the power, authority and discretion by this act vested in the board shall be final in each case and shall not be reviewable by, or appealable to, any court or tribunal," does not make the board independent of judicial supervision. Its power, while "subject only to the limitations and directions in this act contained," is strictly subordinate to those limitations and directions. If it assumes to do anything which is unauthorized by the act or declines to do what the act requires of it, observance of the law will be required by judicial authority when properly invoked. No review may be possible as long as the board observes the limitations and directions contained in the act, and yet the wholesome jurisdiction established by law continues in full force to prevent abuses of discretionary power and for the enforcement of legal rights. In other words, the board is not above the law which creates it.

(2) We cannot sustain the defendant's contention that he is deprived of his property by reason of anything contained in Act 119. It does not appear whether he bought his beer after or before April 30, 1907, the date of the approval of the act, but, if he bought it after, he did so with knowledge that he could not sell unless authorized by the license which he then held or by a license which he expected to obtain under the new act. If he bought before that date, he had no assurance or right to believe that the license would be renewed to enable him to sell after its expiration, if the act should continue in force, or that the act would not be repealed.

"If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the Legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State." Beer Co. v. Massachusetts, 97 U. S. 32.

If he bought after the act was approved, he also knew that he had no vested right to a license under it. It is unnecessary to discuss the question further, since the Organic Act, Sec. 55, provides, "nor shall spirituous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial Legislature shall provide," so that selling would be prohibited in the absence of territorial legislation regulating or restricting it. As the present law expressly saves to him any rights accrued under Act 67, Laws of 1905, if he had any cause of complaint it would be that the act under which he was licensed made no provision for selling liquors which should be on hand at the expiration of his license.

3. We do not sustain the defendant's claim that the act is invalid in containing more than one subject, namely, prohibition as well as regulation of sales, for the act does not prohibit to any further extent than is necessary or proper in reasonable regulation of such sales. Regulating sales implies restricting, limiting and defining their numbers and volume, and the times and places of selling, and requires the prohibiting of sales not made in conformity with the regulations. To entitle the act "An Act to Prohibit the Sale of Intoxicating Liquor when Not Made in Accordance with the Regulations Hereof," or "When Not Made by Authority of Licenses Granted Under the Provisions Hereof," would furnish no more hint of its contents than is found in the title "To regulate the Sale of Intoxicating Liquors." If the act had been entitled "An Act to Regulate and Also, in Certain Cases, Prohibit the Sale of Intoxicating Liquors," the title would give no more information than is given by the present title. Many cases are cited by the defendant which do not appear to go as far as his contention. In Brownson v. Oberlin, 41 O. 76, Oberlin, under a State law authorizing incorporated villages to provide by ordinance against the evils resulting from the sale of intoxicating liquors within the limits of the corporation, passed an ordinance declaring it unlawful to sell intoxicating liquors. It was held that the prohibitory ordinance was unauthorized. In Cantril v. Sainer, 59 Ia. 26, "regulating the use and sale of intoxicating liquors," was held not to authorize an ordinance which was "entirely prohibitory. There is no pretense at regulation." Sweet v. Wabash, 41 Ind. 12, holds that a law permitting towns to "regulate all places where intoxicating liquors are sold to be used on the premises," did not authorize an ordinance prohibiting sales. State v. Fay, 44 N. J. L. 474, holds that authority to prohibit all sale of intoxicating drinks and to license, regulate or prohibit inns or taverns did not include authority to regulate sales outside of inns and taverns. Paul v. Gloucester County, 50 N. J. L. 585, holds that "An Act to Regulate the Sale of Intoxicating and Brewed Liquors" may prohibit the sale of such liquors by the small measure. "Every license law is to some extent a prohibitory law. It prohibits the sale by all persons who have no license." Miller v. Jones, 30 Ala. 89, holds that "An Act to Regulate," etc., does not authorize an ordinance prohibiting sales "either directly or by a prohibitory charge for a license." People v. Gadway, 61 Mich. 285, holds that a similar title does not authorize a provision in the act setting apart certain territory over which sales are entirely prohibited. Hauck's case, 70 Ib. 396, holds that a later act with a similar title does not authorize the sections prohibiting sales in any county upon a majority vote. We do not, however, find it necessary in consequence of anything which appears in the decisions cited to treat Act 119 as invalid. As said of our County Act, "We find nothing in the act which is not exressed in its title in the sense of being incident germane and cognate thereto." Castle v. Secretary, 16 Haw. 780.

The well-known reasons for requiring a simple and explanatory title in order that lawmakers may not be misled in passing bills containing subjects of which they are not reasonably apprised by the title has been stated in numerous decisions of this court. n. Sec. 45 Org. Act. "When the general purpose is declared in the title, the means for its accomplishment, being a penalty, will be presumed to be intended as a necessary incident." Territory v. Wong Feart, 17 Haw. 355. The act entitled "An Act to Enact the Revised Laws of Hawaii," embraced but one subject and that expressed in its title. In re Tom Pong, Ib. 566. "This provision, as it seems to us, has a proper relation to the other provisions. The various provisions are not incongruous; they have a natural connection with each other, and are fairly embraced in one subject, which is embraced in the title of the act. The presumption is that the act is valid. The provision of the Organic Act which is now invoked should be literally construed." Tibbetts v. Damon, Ib. 203.

The most prominent feature, perhaps, of the act under consideration is not that sales are declared to be unlawful if not licensed in conformity with its requirements, but that the granting of licenses subject to the requirements and directions of the act is discretionary not, as formerly, with the Minister of the Interior or Territorial Treasurer, but with the Board of Commissioners.

Counsel for defendant wish us to construe Sec. 4 of the act as giving the Board of Commissioners prohibitory powers beyond anything that would properly fall within the regulation referred to in the title, and then declare the title too narrow as not including these powers. But it is the duty of courts to construe the language of an act, if possible, so as to avoid unconstitutionality (U. S. v. Coombs, 12 Pet. 72), and we should therefore rather be justified in holding that the prohibitory powers which might be implied from Sec. 4 could be exercised only to such extent as should not interfere with the object of regulation expressed in the title. Myer v. Car Co., 102 U. S. 1, 12. To declare the act to be invalid because its title is too narrow to include the provision for boards of license commissioners or statement of the powers vested in them would be an unjust aspersion upon legislative intelligence and would unwarrantably frustrate the exercise of legislative power.

The judgment appealed from is affirmed.

E. C. Peters (C. R. Hemenway, Attorney General, with him on the brief) for plaintiff.

T. M. Harrison for defendant.

NEWS NOTES OF THE FAR EAST

A Peking message is to the effect that the Emperor, who has been indisposed for some time, is fast declining and suffering from the frequent attack of headache. He is unable to sit up for long.

It is rumored that Japan has lodged a protest with the Russian Government against its project to enforce the municipal system in Harbin on January 1 next year. The reason is that Harbin belongs to the Chinese dominion and Russia is by no means entitled to enforce her own laws and systems in the place which is not her territory.

Rin-ichiro Katayama, 21, son of Sohei Katayama, living at Muroyamachi, Imaharu, Iyo province, is reported to have flung himself into the crater of Mt. Aso, in Kyushu. The youth was recently plucked in the matriculation examination of Fukuoka Engineering School. This failure drove him to this desperate step.

The first official estimate of the Japanese crop of rice this year, based on the conditions of the 24th ult., was published on Thursday. The estimate puts the crop at 50,391,242 koku, showing an increase of 8.8 per cent. as compared with last year and of 14.8 per cent. as compared with an average year. Owing to the recent floods, the crop in Kanto is expected to have suffered some damage.

The Japanese Imperial Household is being guarded against infection from the cholera districts. Viscount Tanaka, Minister of the Imperial Household Department, has issued a notification to the following effect: No provisions which have passed through Shanghai, Moji or other cholera-infected places are to be supplied to Their Majesties the Emperor and Empress. Persons coming from the places mentioned will not be received in audience by Their Majesties within a week of the time when they left those localities. Letters, papers, magazines and other articles from the infected places will not be accepted by the Imperial Household unless they have been disinfected. The above regulations apply also to the Crown Prince and Princess.

Justin McCarthy tells a reminiscent story of the late Henry Ward Beecher. Mr. Beecher entered Plymouth church one Sunday and found several letters awaiting him. He opened one and found it contained the single word "Fool." Quietly and with becoming seriousness he announced to the congregation the fact in these words: "I have known many an instance of a man writing a letter and forgetting to sign his name, but this is the only instance I have ever known of a man signing his name and forgetting to write the letter."

On a Southern train some time ago the conductor appeared in the doorway of one of the cars though he had already taken up the tickets. "Does there happen to be anybody here," he called out, "who hails from Ken-

JAPANESE SEIZE FINE NAVAL BASE

WASHINGTON, Sept. 3.—News from Yokohama that Japanese "explorers" had occupied and hoisted the national flag over the island of Pratas, near the Philippines, attracted much attention here because by this act has been added to Japanese territory an island within 120 miles of the Philippines, which would furnish an admirable naval base. Japanese possessions are brought almost within the archipelago, because Pratas island is less than sixty miles north of the twentieth parallel, which was the international boundary of the former Spanish dominions as defined in the treaty of Paris.

Pratas island, in connection with the excellent anchorage afforded by Pratas reef, would be very serviceable to the Japanese, should their navy operate in the water adjacent to the Philippines. The reef, the northeast point of which is about eleven miles from the island, is a wind barrier of circular form, inclosing a lagoon with water of from five to ten fathoms. The reef is about forty miles in circumference, and between one and two miles in breadth. There are two channels leading into the lagoon, one on either side of Pratas island. There are several good anchorages in from ten to twenty fathoms of water, the position abreast of the south channel being well adapted for naval purposes.

The War and Navy Department officials say that they have no official information about this new acquisition of the Japanese nation.

Pratas island is composed of sand. It has been generally visited by Chinese fishermen in the early part of the year. It is said to be the last island between the chain running down to Formosa and beyond the Philippine Islands.

In no way could the island be of value to any one except for naval purposes. It is barren, except for bushy growth. But as a coaling and refitting base it might be of great value during a blockade of Manila or ports on the Chinese coast.

SITE FOR CHILDREN'S HOSPITAL SUGGESTED

Editor Advertiser: The Children's Hospital continues to interest the public as it should. The site is the all-important question but apparently has not been settled. Will you permit me to offer some suggestions on the subject.

Any place on Kuakini street is bad. It is old kalo-patch land and specially in rainy weather is unpleasant. Added to this, the price which I understand was asked for a certain lot, will take no inconsiderable part of the proposed endowment fund and every cent possible should be saved for that, as even the interest on $100,000 would be insufficient.

Why would not the north slope of Punchbowl adjoining the Punchbowl road be the ideal spot? It is government land subject to a short remainder of the Kapiolani Estate and my experience with that concern leads me to believe that, for so noble an object, it will readily surrender its leasehold interest in any five or ten acres required for the purpose.

I trust the committee will give this its serious consideration.

Very respectfully,
W. R. CASTLE.

Honolulu, Sept. 20, 1907.